

## Message Text

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ACTION IO-10

INFO OCT-01 EUR-12 EA-06 ISO-00 OIC-02 EB-07 COME-00

CIAE-00 INR-07 NSAE-00 INT-05 FEA-01 AF-06 ARA-06

NEA-09 L-02 DLOS-03 OFA-01 OES-03 PRS-01 AID-05

TRSE-00 OMB-01 /088 W  
----- 067676

R 020845Z APR 75  
FM AMEMBASSY TOKYO  
TO SECSTATE WASHDC 9101  
INFO US MISSION BRUSSELS 1497  
US MISSION GENEVA 1550  
US MISSION OECD PARIS 3510  
US MISSION USUN 1910

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FROM USDEL

E.O. 11652: N/A  
TAGS: ECOSOC UN OCON  
SUBJ: FOURTH MEETING OF COMMITTEE ON NATURAL RESOURCES, TOKYO  
MARCH 24-APRIL 4

REF: A. TOKYO 3901 B. TOKYO 3903 C. TOKYO 3991  
D. TOKYO 4219

1. FOLLOWING IN PARA. 2 IS STATEMENT OF AMB. FERGUSON  
IN COMM. ON NATURAL RESOURCES, APRIL 1. US DEL HAD INTENDED  
NOT TO INTERVENE IN DEBATE ON AGENDA ITEM 7--PERMANENT  
SOVEREIGNTY OVER NATURAL RESOURCES. AMB. FERGUSON,  
HOWEVER, DECIDED TO DELIVER EXTEMPORANEOUS STATEMENT AFTER  
A PARTICULARLY INACCURATE AND OBNOXIOUS INTERVENTION BY  
IRAQ DELEGATION.

2. TRANSCRIPTION OF REMARKS BY AMB. FERGUSON: QTE.  
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MR. CHAIRMAN, THE DELEGATION OF THE UNITED STATES HAD

NOT INTENDED TO INTERVENE IN THE DEBATE ON THE ITEM ON THE AGENDA BEFORE US.--PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES. IN OUR OPINION THIS ITEM IS ESSENTIALLY A POLITICAL ISSUE DESPITE--OR PERHAPS BECAUSE OF--ITS TITLE. MOREOVER, WE ARE UNDER NO ILLUSION THAT EXPRESSION OF OUR VIEWS WILL CHANGE THE OPINIONS AND POSITIONS OF PREVIOUS SPEAKERS. NONETHELESS, WE BELIEVE IT IS IMPERATIVE THAT WE AGAIN RESTATE THE POSITION OF THE UNITED STATES LEST OUR SILENCE BE CONSTRUCTED AS AN ABANDONMENT OR A CHANGE IN OUR POSITION REGARDING THE ITEM--PERMANENT SOVEREIGNTY--AS IT HAS EVOLVED IN THE UNITED NATIONS SYSTEM.

FIRST. OUR POSITION ON PERMANENT SOVEREIGNTY CAN BE PRECISELY STATED. IT BEARS LITTLE RESEMBLANCE TO SOME OF THE DESCRIPTIONS OF OUR POSITION HEARD IN THIS HALL. .THE UNITED STATES SUPPORTS THE CONCEPT OF NATIONAL PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES FOR OTHERS AS WELL AS OURSELVES.

.THE UNITED STATES RECOGNIZES THE RIGHT OF A NATIONAL STATE TO NATIONALIZE PROPERTY WITHIN THE JURISDICTION OF THE STATE SO LONG AS THAT EXERCISE OF NATIONAL SOVEREIGNTY IS IN ACCORD WITH APPLICABLE TRANSNATIONAL LAW.

AS A CONSEQUENCE OF OUR PRINCIPLED POSITION, WE SUPPORTED AND VOTED FOR GENERAL ASSEMBLY 1803 OF THE 17TH SESSION ADOPTED ON DECEMBER 14, 1962. THAT RESOLUTION APPROPRIATELY RECOGNIZED THE RIGHTS OF SOVEREIGNTY IN REGARD TO NATURAL RESOURCES. BUT, IT ALSO RECOGNIZED THE CONSTRAINTS EXPRESSED IN WELL KNOWN AND LONG SETTLED PRINCIPLES OF INTERNATIONAL--OR AS I PREFER "TRANSNATIONAL"--LAW. CONTRARY TO ASSERTIONS MADE BY SOME DELEGATIONS TO THIS MEETING OF THE COMMITTEE ON NATURAL RESOURCES, THERE HAS BEEN NO CONSENSUS IN THE UNITED NATIONS ON PERMANENT SOVEREIGNTY SINCE DECEMBER 14, 1962.

. THE UNITED STATES AND OTHER STATES HAVE VOTED AGAINST OR ABSTAINED ON EVERY PERMANENT SOVEREIGNTY RESOLUTION SINCE RESOLUTION 1803 (XVII).

. THE UNITED STATES AND OTHER STATES EXPRESSLY INTERPOSED RESERVATIONS TO THE PERMANENT SOVEREIGNTY PROVISIONS OF THE DECLARATION AND PROGRAM OF ACTION ADOPTED LIMITED OFFICIAL USE

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BY THE SIXTH SPECIAL SESSION OF THE GENERAL ASSEMBLY IN MAY 1974.

. THE UNITED STATES AND OTHER STATES VOTED AGAINST THE PERMANENT SOVEREIGNTY PROVISIONS OF THE SO CALLED OMNIBUS RESOLUTION ADOPTED BY THE ECONOMIC AND SOCIAL COUNCIL ON AUGUST 1, 1974. BEYOND THAT WE CAST OUR NEGATIVE VOTE AGAINST THE ENTIRE RESOLUTION PRINCIPALLY BECAUSE IT INCLUDED THE TOTALLY UNACCEPTABLE PROVISIONS

ON PERMANENT SOVEREIGNTY.

. THE UNITED STATES AND OTHER STATES VOTED AGAINST  
THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES IN  
THE 29TH GENERAL ASSEMBLY PRINCIPALLY BECAUSE THE  
CHARTER INCLUDED THE SAME UNACCEPTABLE FORMULATIONS ON  
PERMANENT SOVEREIGNTY TO WHICH WE HAD PERSISTENTLY AND  
CONSISTENTLY OBJECTED SINCE DECEMBER 14TH 1962. WE  
TOOK THIS ACTION DESPITE OUR DEMONSTRATED ACCEPTANCE OF  
AN OVERWHELMING NUMBER OF OTHER PROVISIONS OF THE  
CHARTER.

. THE UNITED STATES HAS MAINTAINED ITS POSITION,  
RESTING ON THOSE FUNDAMENTAL PRINCIPLES TO WHICH WE  
ADHERE, IN THE RECENTLY CONCLUDED UNIDO CONFERENCE IN  
LIMA.

IN THESE CIRCUMSTANCES, MR. CHAIRMAN, THE CLAIM OF  
THE EXISTENCE OF A UN CONSENSUS ON PERMANENT SOVEREIGNTY  
IS DEMONSTRATEDLY FALSE.

MR. CHAIRMAN, THE UNITED STATES POSITION RESTS NOT  
ON CAPRICE OR HOSTILITY, BUT RATHER UPON PRINCIPLES OF  
A PROFOUND CHARACTER TO WHICH WE ADHERE TO ENSURE  
FAIRNESS AND JUSTICE.

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ACTION IO-10

INFO OCT-01 EUR-12 EA-06 ISO-00 OIC-02 EB-07 COME-00 INT-05

CIAE-00 INR-07 NSAE-00 FEA-01 L-02 AF-06 ARA-06

NEA-09 DLOS-03 OFA-01 OES-03 PRS-01 AID-05 TRSE-00

OMB-01 /088 W

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R 020845Z APR 75

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 9102

INFO US MISSION BRUSSELS 1498

US MISSION GENEVA 1551

US MISSION OECD PARIS 3511

US MISSION USUN 1911

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FROM USDEL

FIRST, THE UNITED STATES BELIEVES THE RECENT UN FORMULATIONS OF PERMANENT SOVEREIGNTY ARE MISCONCEIVED IN THIS PRESENT WORLD OF INTERDEPENDENCY. IT HAS TAKEN US 500 YEARS TO MOVE FROM AN ERA WHEN NATION-STATES CLAIMED THE VERY SEAS OF OUR EARTH AS EXCLUSIVE DOMAINS OF PERMANENT NATIONAL SOVEREIGNTY. ONLY TODAY HAVE WE REACHED THE POINT OF RECOGNIZING THAT THE NATURAL RESOURCES OF THE SEA ARE A COMMON HERITAGE OF ALL MANKIND AND NOT AN ENDOWMENT SUBJECT TO NARROW CHAUVINISTIC NATIONALISTIC CLAIMS. WHEN WE EXAMINE RECENT CLAIMS TO THE EARTH'S NATURAL RESOURCE ENDOWMENT ON LAND, WE CANNOT BUT CONCLUDE THAT THESE CLAIMS MADE IN THE NAME OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES ARE PERNICIOUSLY RETROGRESSIVE.

SECOND, THE UNITED STATES BELIEVES THAT THESE RECENT FORMULATIONS OF THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES ARE CLEARLY VIOLATIVE

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OF THE ACCEPTED AND DEVELOPED PRINCIPLES OF TRANSNATIONAL LAW. PROVISIONS FOR COMPENSATION IN CASES OF EXPROPRIATION SOLELY UNDER DOMESTIC LAW OF THE EXPROPRIATING STATE ARE SO PATENTLY ILLEGAL--IN THE TRUEST SENSE--AS TO BE BEYOND ARGUMENT.

THIRD, THE UNITED STATES BELIEVES THAT THESE RECENT FORMULATIONS OF THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES ARE SIMPLY BAD POLICY--REGARDLESS OF THE LEGALITIES OF THE ISSUE. THE MAJOR MECHANISM FOR THE TRANSFER OF RESOURCES TO THE DEVELOPING WORLD HAS BEEN INVESTMENT FROM PRIVATE SOURCES--NOT OFFICIAL AID. IT REQUIRES NO SOPHISTICATED ANALYSIS TO DEMONSTRATE THAT THESE TRANSFERS ARE DISCOURAGED WHEN NATIONS ADHERE TO FORMULATIONS WHICH OF THEMSELVES CREATE ADDITIONAL RISKS OF UNCOMPENSATED LOSS OF INVESTMENTS.

MR. CHAIRMAN, I BEG YOUR PERMISSION TO CALL TO THE COMMITTEE'S ATTENTION THE "POLICY STATEMENT ON ECONOMIC ASSISTANCE AND INVESTMENT SECURITY IN DEVELOPING NATIONS" PROPOUNDED BY THE PRESIDENT OF THE UNITED STATES ON JANUARY 19, 1972. I SHOULD LIKE TO QUOTE THE PARTICULARLY RELEVANT PROVISIONS IN LIGHT OF OUR DEBATE. OUR PRESIDENT STATED: QUOTE I ALSO WISH TO MAKE CLEAR THE APPROACH OF THIS ADMINISTRATION TO THE ROLE OF PRIVATE INVESTMENT IN DEVELOPING COUNTRIES, AND IN PARTICULAR TO ONE OF THE MAJOR PROBLEMS AFFECTING SUCH PRIVATE INVESTMENT: UPHOLDING ACCEPTED PRINCIPLES OF

INTERNATIONAL LAW IN THE FACE OF EXPROPRIATIONS WITHOUT ADEQUATE COMPENSATION.

UNFORTUNATELY, FOR ALL CONCERNED, THESE VIRTUALLY AXIOMATIC VIEWS ON THE BENEFICIAL ROLE OF AND NECESSARY CONDITIONS FOR PRIVATE CAPITAL HAVE BEEN CHALLENGED IN RECENT AND IMPORTANT INSTANCES. U.S. ENTERPRISES, AND THOSE OF MANY OTHER NATIONS, OPERATING ABROAD UNDER VALID CONTRACTS NEGOTIATED IN GOOD FAITH, AND WITHIN THE ESTABLISHED LEGAL CODES OF CERTAIN FOREIGN COUNTRIES, HAVE FOUND THEIR CONTRACTS REVOKED AND THEIR ASSETS SEIZED WITH INADEQUATE COMPENSATION, OR WITH NO COMPENSATION. END QUOTE.

OUR PRESIDENT CONTINUED: QUOTE IN LIGHT OF ALL THIS, IT SEEMS TO ME IMPERATIVE TO STATE--TO OUR CITIZENS LIMITED OFFICIAL USE

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AND TO OTHER NATIONS--THE POLICY OF THIS GOVERNMENT IN FUTURE SITUATIONS INVOLVING EXPROPRIATORY ACTS. UNDER INTERNATIONAL LAW, THE UNITED STATES HAS A RIGHT TO EXPECT:

--THAT ANY TAKING OF AMERICAN PRIVATE PROPERTY WILL BE NONDISCRIMINATORY;

--THAT IT WILL BE FOR A PUBLIC PURPOSE; AND

--THAT ITS CITIZENS WILL RECEIVE PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION FROM THE EXPROPRIATING COUNTRY

THUS, WHEN A COUNTRY EXPROPRIATES A SIGNIFICANT U.S. INTEREST WITHOUT MAKING REASONABLE PROVISION FOR SUCH COMPENSATION TO U.S. CITIZENS, WE WILL PRESUME THAT THE U.S. WILL NOT EXTEND NEW BILATERAL ECONOMIC BENEFITS TO THE EXPROPRIATING COUNTRY UNLESS AND UNTIL IT IS DETERMINED THAT THE COUNTRY IS TAKING REASONABLE STEPS TO PROVIDE ADEQUATE COMPENSATION OR THAT THERE ARE MAJOR FACTORS AFFECTING U.S. INTERESTS WHICH REQUIRE CONTINUANCE OF ALL OR PART OF THESE BENEFITS. IN THE FACE OF THE EXPROPRIATORY CIRCUMSTANCES JUST DESCRIBED, WE WILL PRESUME THAT THE UNITED STATES GOVERNMENT WILL WITHHOLD ITS SUPPORT FROM LOANS UNDER CONSIDERATION IN MULTILATERAL DEVELOPMENT BANKS. HUMANITARIAN ASSISTANCE WILL, OF COURSE, CONTINUE TO RECEIVE SPECIAL CONSIDERATION UNDER SUCH CIRCUMSTANCES. END QUOTE.

MR. CHAIRMAN, THE UNITED STATES LOOKS BEYOND OUR PROPER AND VALUED AND, ALSO CHERISHED, NATIONAL INTERESTS TO THE LARGER CONSIDERATIONS OF THE GLOBAL INTEREST. IMPERFECT THOUGH IT MAY BE, THAT GLOBAL INTEREST IS NOW BEST EXEMPLIFIED IN THE ACCEPTED PRECEPTS OF DEVELOPED TRANS-NATIONAL LAW. IT IS TO THAT INTEREST THAT WE DEDICATE OUR BEST EFFORTS. EVEN IF WE STAND ALONE, WE SHALL PERSEVERE IN OUR QUEST FOR A FAIR, JUST AND HU-

MANE ECONOMIC ORDER RESTING UPON OUR COMMON RESOURCE  
ENDOWMENT NO MATTER WHETHER THAT RESOURCE LIES WITHIN  
THE LAND OR AT SEA. UNQTE.  
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## Message Attributes

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